UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/52
12 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 17 (a) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Question of the death penalty

Report of the Secretary-General submitted pursuant to Commission resolution 1998/8

CONTENTS

		Paragraphs	Page
Introduction		1 - 8	2
I.	EXECUTIVE SUMMARY OF MEASURES TAKEN BY THE UNITED NATIONS AND THE POSITION OF STATES	9 - 16	3
II.	CHANGES IN LAW AND PRACTICE	17 - 24	5
III.	STATUS OF THE DEATH PENALTY AS AT 1 DECEMBER 1998	25	7
IV.	CONCLUSIONS	26 - 27	12

Introduction

1. In paragraph 5 of its resolution 1998/8 the Commission on Human Rights requested the Secretary-General to continue to submit to the Commission, in consultations with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide, to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing the protection of the rights of those facing the death penalty.

2. The quinquennial reports on capital punishment and implementation of the Safeguards guaranteeing the rights of those facing the death penalty referred to in Commission on Human Rights resolution 1998/8 have been prepared under the auspices of the Centre for International Crime Prevention at the United Nations Office at Vienna (formerly the Crime Prevention and Criminal Justice Division of the Secretariat). To date, five such reports have been submitted, the most recent one in 1995 (E/1995/78 and Add.1). A report of the Secretary-General on this subject was also submitted to the Commission on Crime Prevention and Criminal Justice at its fifth session in 1996 (E/CN.15/1996/19), which consolidated the information contained in the fifth quinquennial report with additional information received up to March 1996.

3. The quinquennial reports are prepared on the basis of a detailed questionnaire sent to States. In addition to setting out the data received from States responding to the questionnaire, the report also draws on other available data including current criminological research, and information from specialized agencies and intergovernmental and non-governmental organizations.

4. The latest quinquennial report provides information on a number of issues regarding the death penalty in countries worldwide. This information includes changes in the status of the death penalty, numbers of death sentences carried out, ratification of international instruments restricting the scope of the death penalty, and the types of crimes for which the death penalty is provided. Pursuant to Economic and Social Council resolution 1989/64, the fifth quinquennial report also included information regarding the implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty, thus combining the reports on the death penalty with reports on the implementation of the Safeguards previously submitted to the former Committee on Crime Prevention and Control. The Safeguards include provisions relating to the types of crimes for which the death penalty might be imposed, persons who should be exempt from the application of the death penalty (e.g. children and the mentally disabled), and fair trial guarantees for those facing a possible sentence of death.

5. Pursuant to Commission on Human Rights resolution 1998/8, the Secretary-General requested information from all States on changes in law and practice concerning the death penalty. A similar request for information was sent to specialized agencies and intergovernmental and non-governmental organizations. Information was received from the following States: Antigua

and Barbuda, Armenia, Austria (on behalf of the European Union), Azerbaijan, China, Cyprus, Denmark, Kuwait, Lebanon, Malaysia, Mauritius, Nepal, Singapore, Trinidad and Tobago and Turkey. The amended information was also received from Amnesty International.

6. The present report will focus on changes in law and practice concerning the death penalty. Information regarding the extent to which the Safeguards are not respected in certain countries is often brought to the attention of the Special Rapporteur on extrajudicial, summary or arbitrary executions and included in his/her reports to the Commission on Human Rights.

7. The present report also includes information on measures taken by United Nations organs and bodies since that information was neither included in the last report nor in the reports of the Secretary-General on the capital punishment referred to above.

8. Following the practice adopted in earlier quinquennial reports, countries are classified as abolitionist, abolitionist de facto, or retentionist. Countries that do not contemplate the death penalty in their laws, either for any crimes (whether ordinary crimes or crimes in wartime or other exceptional circumstances) or for ordinary crimes only, are regarded as abolitionist. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more are considered abolitionist de facto. All other countries are defined as retentionist, meaning that the death penalty is in force and executions do take place, although in many retentionist countries such executions might be quite rare.

I. EXECUTIVE SUMMARY OF MEASURES TAKEN BY THE UNITED NATIONS AND THE POSITION OF STATES

9. The question of capital punishment has been considered in United Nations human rights organs and bodies since 1959. As far back as 1971 the General Assembly called on States to progressively restrict the use of the death penalty (resolution 2857 (XXVI)). In 1977, it reaffirmed this appeal in resolution 32/61. The desirability of the abolition of capital punishment has also been strongly recommended by the United Nations since 1977. Article 6 of the International Covenant on Civil and Political Rights affirms the right to life. While not prohibiting capital punishment as such, this article provides that a sentence of death may be imposed only for the most serious crimes in accordance with the law. The Human Rights Committee has observed that article 6 strongly suggests that the abolition of the death penalty is desirable. The entry into force in 1989 of the Second Optional Protocol to the Covenant was a step in this direction.

10. It is also significant to note that Security Council resolutions 827 (1993) of 25 May 1993 and 955 (1994) of 8 November 1994 on the establishment of international criminal jurisdictions for the former Yugoslavia and Rwanda, respectively, excluded the death penalty, and established that imprisonment was the sole penalty to be imposed by these tribunals for crimes of genocide and crimes against humanity.

11. At its fifty-third (1997) and fifty-fourth (1998) sessions, the Commission on Human Rights adopted resolutions 1997/12 and 1998/8 requesting

the Secretary-General to prepare a yearly supplement to his quinquennial report and to submit it to the Commission. Thus, the issue has become a regular item on the Commission's agenda. In its resolutions the Commission also called upon all States that still maintain the death penalty progressively to restrict the number of offences for which it may be imposed; to establish a moratorium on executions with a view to completely abolishing the death penalty; and to make available to the public information with regard to the imposition of the death penalty.

12. The Sub-Commission on Prevention of Discrimination and Protection of Minorities and its sessional working group on the administration of justice have also considered the evolution of capital punishment. Sub-Commission member Mr. El Hadji Guissé has submitted working papers on this issue (see, for example, document E/CN.4/Sub.2/1998/WG.1/CRP.3). The Special Rapporteur on extrajudicial, summary or arbitrary executions had included in his reports each year information on State practices regarding the implementation of the Safeguards guaranteeing the protection of the rights of those facing the death penalty.

13. The Human Rights Committee has examined and continues to examine under the Optional Protocol to the Covenant a large number of cases involving capital punishment. The Committee has adopted many final decisions ("views") on the merits of such complaints and in more than half of the cases has found violations of the provisions of the Covenant, especially paragraph 3 of article 14 of the Covenant which lays down minimum guarantees of defence. In some cases, the Committee has linked the violation of article 14 with a violation of the right to life (art. 6), and adopted what is by now a standard formula:

> "The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected, and which could no longer be remedied by appeal, constitutes a violation of article 6 of the Covenant ... . Since the final sentence of death was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated". 1/

14. The High Commissioner for Human Rights continues to engage in a constructive dialogue with Governments in order to campaign for the limitation and elimination of the use of the death penalty. She has made several statements and declarations and sent messages concerning the imposition of the death penalty in a number of States (for the text of these messages, see the OHCHR website at www.unhchr.ch).

15. The information received shows two approaches towards the abolition of the death penalty. While the European Union fully supports the fight against violent crime, in its opinion, there is ample evidence that executions do not

---

1/ Communication No. 282/1988 Leaford Smith v. Jamaica, views adopted on 31 March 1988, Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), vol. II, annex XII.E, para. 10.6.

provide for less violent societies. Rather, the death penalty and its application tend further to brutalize and escalate social conflicts, thus diminishing the essential respect for human rights and dignity. At the Second Summit of Heads of State and Government of the Council of Europe (Strasbourg, October 1997), the heads of Government including those of all EU member States called for the universal abolition of the death penalty. New States members of the Council of Europe have also committed themselves to a moratorium on the death penalty and to ratify Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Finally, the EU decided, as an integral part of its human rights policy, to strengthen its international activities aimed at the abolition of the death penalty.

16. The Governments of Antigua and Barbuda, China and Trinidad and Tobago noted that Commission resolution 1998/8 reflected the views of the abolitionist States and that the voting record showed that there was no international consensus on the abolition of the death penalty. They pointed out that at the substantive session of the Economic and Social Council in July 1998, 52 delegations disassociated themselves from the resolution on that subject. In their opinion, the Commission on Human Rights in compiling the yearly updates duplicated the research and the reports prepared by the Centre for International Crime Prevention. The yearly updates therefore were unnecessary. These Governments also believed that the issue of the death penalty should remain within the framework of the Commission on Crime Prevention and Criminal Justice.

II. CHANGES IN LAW AND PRACTICE

17. Changes in law and practice concerning the death penalty may cover a number of different issues. Changes in law may include new legislation abolishing or reinstating the death penalty, or restricting or expanding its scope, as well as ratifications of international instruments that provide for abolition of the death penalty. Changes in practice may cover non-legislative measures with a significant new approach regarding the use of the death penalty; for example, countries may, while retaining the death penalty, announce a moratorium on its application, or after a de facto moratorium, resume executions. Such changes might also include measures to commute death sentences.

18. Based on the information received, the following changes in law and practice can be reported.

A. Countries which have abolished the death penalty since 1 January 1998

19. According to information received, Estonia abolished the death penalty in 1998. The Governments of Azerbaijan and Nepal reported that the death penalty was abolished in their States in 1988 and the criminal legislation was revised accordingly.

B. Countries restricting the scope of the death penalty or limiting its use since 1 January 1998

20. According to information received, in June 1998 the parliament of Tajikistan passed a new Criminal Code which would reduce the number of articles carrying a possible death sentence from 44 to 15. Under the new Criminal Code a death sentence could be commuted to 25 years' imprisonment. The new Criminal Code came into force on 1 September 1998.

C. Countries having ratified international instruments since 1 September 1997 that provide for the abolition of the death penalty

21. There are three international instruments in force which commit States parties to abolishing the death penalty. They are: the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolition of the death penalty; Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty; and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Protocol No. 6 concerns abolition of the death penalty in peacetime. The two other protocols provide for the total abolition of the death penalty but allow States wishing to do so to retain the death penalty in wartime.

22. During the reporting period two States acceded to the Second Optional Protocol, namely Costa Rica on 5 June 1998 and Nepal on 4 March 1998. Four States ratified Protocol No. 6 to the European Convention, that is the Republic of Moldova on 12 September 1997, Croatia on 5 November 1997, Estonia on 17 April 1998 and Greece on 8 September 1998.

D. Countries establishing a moratorium on executions with a view to completely abolishing the death penalty

23. The Government of Armenia stated that in conformity with a presidential moratorium, no executions had taken place in Armenia since 1991 and no executions will be carried out until the adoption of the new Criminal Code abolishing the death penalty, at the end of 1998. According to information received, in September 1996, the President of Latvia announced to the Parliamentary Assembly of the Council of Europe that he would grant all requests for clemency submitted to him. In June 1998, following the retention by the Saeima of the death penalty in the new Criminal Code, the President stated that he would keep the moratorium on executions in place.

E. Countries reintroducing the use of the death penalty, extending its scope or resuming executions since 1 January 1998

24. It was reported by Amnesty International that on 2 June 1998 in the Central Prison of Addis Ababa the first execution was carried out since the overthrow of the Dergue (military government) in 1991.

III. STATUS OF THE DEATH PENALTY WORLDWIDE AS AT 1 DECEMBER 1998

The latest quinquennial report and the 1998 yearly supplement include a
ıber of tables showing the status of the death penalty worldwide. This
:tion reproduces some of these tables and updates them to include
velopments at the end of 1997 and in 1998, as well as making changes where
ditional information has become available.

Table 1. List of retentionist countries a/

fghanistan
lgeria
ntigua and Barbuda
rmenia
ahamas

ahrain
angladesh
arbados
elarus
elize

enin
otswana
ulgaria
urkina Faso
urundi

ameroon
had
hina
omoros
uba

emocratic People's Republic of Korea
emocratic Republic of the Congo
ominica
gypt
quatorial Guinea

ritrea
thiopia
abon
hana
uatemala

uyana
ndia
ndonesia
ran (Islamic Republic of)
raq

Jamaica
Japan
Jordan
Kazakhstan
Kenya

Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Latvia
Lebanon

Lesotho
Liberia
Libyan Arab Jamahiriya
Lithuania
Malawi

Malaysia
Mauritania
Mongolia
Morocco
Myanmar

Nigeria
Oman
Pakistan
Qatar
Republic of Korea

Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines

Saudi Arabia
Sierra Leone
Somalia
Sudan
Swaziland

Syrian Arab Republic
Tajikistan
Thailand
Trinidad and Tobago
Tunisia
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Republic of Tanzania
United States of America
Uzbeskistan
Viet Nam
Yemen
Yugoslavia
Zambia
Zimbabwe

Total: 87 countries

---

a/ The countries or territories listed retain the death penalty for ordinary crimes, and in most cases are known to have carried out executions during the past 10 years.

Table 2. List of countries that are totally abolitionist

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Andorra	1990	..	1943
Angola	1992	..	..
Australia	1985	1984	1967
Austria	1968	1950	1950
Azerbaijan	1998	..	..
Belgium	1996	..	1950
Bolivia	..	..	1974
Cambodia	1989	..	..
Cape Verde	1981	..	1835
Colombia	1910	..	1909
Costa Rica	1877	..	..
Croatia	1990	..	..
Czech Republic	1990	..	1989
Denmark	1978	1930	1950
Dominican Republic	1966	..	..
Ecuador	1906	..	..
Estonia	1998	..	..
Finland	1972	1949	1946
France	1981	..	1977
Georgia	1997	..	1995

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Germany	1949/1987 a/	..	1949
Greece	1997	..	..
Guinea-Bissau	1993	..	1986
Haiti	1987	..	1972
Holy See	1969	..	..
Honduras	1956	..	1940
Hungary	1990	..	1988
Iceland	1928	..	1830
Ireland	1990	..	1954
Italy	1994	1947	1947
Kiribati	..	..	*
Liechtenstein	1987	..	1785
Luxembourg	1979	..	1949
Marshall Islands	..	..	*
Mauritius	1995	..	1987
Micronesia (Federated States of)	..	..	*
Monaco	1962	..	1847
Mozambique	1990	..	1986
Namibia	1990	..	1988
Nepal	1998	..	..
Netherlands	1983	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979	..	1930
Norway	1979	1905	1948
Palau	..	..	..
Panama	..	..	1903
Paraguay	1992	..	1917
Poland	1997	..	1988
Portugal	1976	1867	1847
Republic of Moldova	1995	..	..
Romania	1990	..	1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990	..	*
Slovakia	1990	..	1989
Slovenia	1991	..	1959

Country or territory	Date of abolition	Date of abolition for ordinary crimes	Date of last known execution
Solomon Islands	..	1966	*
South Africa	1995	..	1989
Spain	1995	1978	1975
Sweden	1973	1921	1910
Switzerland	1992	1937	1945
The former Yugoslav Republic of Macedonia	1991	..	1988
Tuvalu	..	..	*
Uruguay	1907	..	..
Vanuatu	..	..	*
Venezuela	1863	..	..

Total: 65 countries

Two dots (..) indicate that data are not available.

An asterisk (*) indicates that there have been no executions since the country gained its independence.

A/ The death penalty was abolished in the Federal Republic of Germany in 1949 and in the German Democratic Republic in 1987. The date of the last execution in the German Democratic Republic is not known.

Table 3. List of countries that are abolitionist for ordinary crimes only

Country	Date of abolition for ordinary crimes	Date of last execution
Argentina	1984	..
Bolivia	1991	..
Bosnia and Herzegovina	1997	..
Brazil	1979	1855
Canada	1976	1962
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1979	1964
Israel	1954	1962
Malta	1971	1943

Country	Date of abolition for ordinary crimes	Date of last execution
Mexico	..	1937
Peru	1979	1979
Seychelles	..	*
South Africa	1995	..
United Kingdom of Great Britain and Northern Ireland	1965 a/	1964

Total: 16 countries

Two dots (..) indicate that data are not available.

An asterisk (*) indicates that there have been no executions since the country gained its independence.

---

a/ The death penalty was abolished in Northern Ireland in 1973.

Table 4. List of countries that can be considered abolitionist de facto a/

Country	Date of last known execution
Albania	..
Bermuda	1977
Bhutan	1964
Brunei Darussalam	1957
Central African Republic	1981
Chile	1985
Congo	1982
Côte d'Ivoire	..
Djibouti	*
Gambia	..
Grenada	1978
Guinea	1983
Madagascar	1958
Maldives	1952
Mali	1980
Nauru	*
Niger	1976
Papua New Guinea	1950
Philippines	1976
Samoa	*

Country	Date of last known execution
Senegal	1967
Sri Lanka	1976
Suriname	1984
Togo	..
Tonga	1982
Turkey	1984

Total: 26 countries

Two dots (..) indicate that data are not available.

An asterisk (*) indicates that there have been no executions since the country gained its independence.

---

a/ Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more. It should be pointed out that in some of these countries death sentences continue to be imposed, and not all of the countries listed have a policy of regularly commuting death sentences.

Table 5. Summary of the status of the death penalty worldwide

Number of retentionist countries	87
Number of totally abolitionist countries	65
Number of countries abolitionist for ordinary crimes only	16
Number of countries that can be considered abolitionist	26

III. CONCLUSIONS

26. The last (fifth) quinquennial report affirmed the trend towards an increased pace of abolition, noted in the fourth quinquennial report, and concluded that "an unprecedented number of countries have abolished or suspended the use of the death penalty" (para. 94) and that from 1989 through 1995 "the pace of change may be seen to have been quite remarkable" (para. 96).

27. The information in the present report supports the conclusion that the trend towards abolition continues, with an increase in the figure of totally abolitionist countries from 61 to 65. There is also an increase in the number of countries ratifying international instruments that provide for the abolition of the death penalty. During the reporting period, no country classified as abolitionist (whether for all or only ordinary crimes) made legal changes to reintroduce the death penalty. One retentionist country was reclassified as abolitionist de facto.